



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	<b>Enrolled</b>	Bill No:	<b>SB 1049</b>
Tax:	<b>Water Rights Fee</b>	Author:	<b>Budget and Fiscal Review Committee</b>
Board Position:		Related Bills:	<b>AB 1764 (Budget)</b>

***This analysis will only address the bill's provisions that impact the Board.***

### **BILL SUMMARY**

Among its provisions, this bill would require the Board of Equalization (Board) to assess and collect various fees associated with water rights from owners of water rights on behalf of the State Water Resources Control Board (SWRCB) to fund its programs.

### **ANALYSIS**

#### **Current Law**

Under current law, Section 174 of the Water Code finds and declares that in order to provide for the orderly and efficient administration of the water resources of the state it is necessary to establish a control board which shall exercise the adjudicatory and regulatory functions of the state in the field of water resources. It is also the intention of the Legislature to combine the water rights and the water pollution and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established. These duties currently fall under the purview of the SWRCB.

#### **Proposed Law**

Among its provisions, this bill would add Article 1 (commencing with Section 1525) to Chapter 8 of Part 2 of Division 2 to the Water Code to require each person or entity who holds a permit or license to appropriate water, and each lessor of water, to pay an annual fee according to a fee schedule established by the SWRCB. The fee schedule would be adopted by emergency regulations and set at a rate to recover the total amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The SWRCB's recoverable costs could include, but would not be limited to, the costs incurred in reviewing applications, registrations, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion or use of water subject to this division, and the administrative costs incurred in connection with carrying out these actions.

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Section 1537 would require the Board to collect all annual fees and other fees referred by the SWRCB for collection. The fees would be collected pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The SWRCB would provide the Board with the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

The Board would not handle appeals or claims for refund related to the fees. Those would be handled by the SWRCB.

### **Background**

The following is an excerpt from the Legislative Analyst's Office's "Analysis of the 2003-04 Budget Bill."

**Water Rights Fee Structure Should Be Revised.** Since water rights holders benefit directly from all aspects of the water rights program—including permit issuance and compliance monitoring—we conclude that the existing fee structure should be revised so that fee revenues replace all General Fund support budgeted for the board's program. These fees should also cover water-rights-related costs incurred by other state departments (such as DFG). To accomplish this, we recommend the enactment of legislation to (1) increase existing water rights application fees and (2) establish an *annual* water rights compliance fee. We further recommend that the Legislature enact legislation to establish a special fund for the deposit of these fee revenues, with expenditures from the fund subject to appropriation by the Legislature. By creating the special fund, the Legislature will be able to exercise oversight over the expenditure and use of the fees.

Finally, as a result of creating this new fee structure, we recommend that the General Fund in SWRCB's budget be reduced by \$7.2 million and the new special fund item be increased by a like amount.

The State Water Resources Control Board's water rights program is responsible for permitting and enforcing a subset of California's water rights. In the sections that follow, we discuss the current funding for the program, conclude that fees assessed on water rights holders should fully fund the board's water rights activities, and recommend legislation that would increase current application fees and establish ongoing compliance fees on water rights holders.

#### ***The SWRCB's Water Rights Program***

The board's water rights program permits and enforces water rights established after 1914. The board assesses nominal one-time fees on water rights applications, but the General Fund primarily supports the program.

**Water Rights Program Overview.** The SWRCB's water rights program is responsible for (1) issuing new water rights for water bodies that have not already been fully "allocated" to water rights holders, (2) approving changes to existing water rights (this may be to facilitate a water transfer), and (3) conducting ongoing enforcement and compliance monitoring of water rights under its jurisdiction. The board's enforcement authority applies only to water rights established after 1914.

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*Water Rights Permitting Process.* The water rights permits issued by the board specify the purpose of use, point of diversion, quantity, and other conditions that protect prior water rights holders, the public interest, and the environment. As part of the permit issuance process, the board publicly notices the permit application, allows for public comment, and conducts various environmental reviews as required by statute, including the California Environmental Quality Act (CEQA). Other state agencies, including the Department of Fish and Game (DFG), may also be involved in the environmental review process for water rights.

*Licensing and Ongoing Enforcement Activities.* After a water right has been granted and the terms of the permit have been established, the board will inspect the water project. Before a project can be licensed, all of the terms of the permit must be met and the largest volume of water under the permit must be put to beneficial use. This license represents the final confirmation of the water right and remains effective as long as its conditions are fulfilled and the water diverted continues to be used for a beneficial nonwasteful purpose. The board has authority to enforce the conditions of permits and licenses, and it does so by conducting inspections and investigating complaints about the water use behavior of water rights holders.

*Fee Support Is Minimal.* Currently, a one-time nominal application fee is assessed on all water rights applications, varying depending on the amount of the proposed diversion and/or storage. The minimum application fee is \$100. The current statutorily established fee schedule was last revised in the mid-1980s. These fees raise an insignificant amount of revenue—only about \$30,000—when compared to program expenditures of \$11.1 million in the current year. Applicants proposing large water diversions that are likely to have an impact on the environment pay for the preparation of any environmental documents required to comply with CEQA. However, the applicant does not cover the department's costs of reviewing these documents.

*Budget Proposal.* The budget proposes expenditures of \$8.7 million (\$7.2 million General Fund) to support the water rights program in 2003-04. This reflects the Governor's proposal to reduce the General Fund support for the program by \$3.3 million, a nearly 30 percent reduction in General Fund support. The vast majority of support for the program is proposed from the General Fund, with the balance coming from special funds, federal funds, and reimbursements (including fees). Fee revenues are estimated to cover less than 1 percent of program expenditures.

The 2003-04 budget actually included a \$3.6 million General Fund reduction to the SWRCB, which represents one half of a General Fund fiscal year reduction.

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**COMMENTS**

1. **Sponsor and Purpose.** This bill is sponsored by the Senate Budget Committee to implement the recommendation of the LAO to have the SWRCB fund itself through fees.
2. **Due to budgetary constraints, it would be very difficult for the Board to start-up and administer the proposed water rights fees.** Currently, Board staff availability is extremely limited, which is impacting staff's ability to address regular workloads. Implementation of this legislation would require the reassignment of existing staff within divisions that are already understaffed.

This bill would also impact the Board's ability to administer other proposed legislative changes. The Board would not have the necessary staff to start-up and administer the proposed water rights fees if other pending legislation (SB 20 - *electronic waste fee*; AB 35 or AB 1416 - *cigarette tax increase*; AB 71 - *cigarette retailer licensing program*; AB 433 - *marine invasion species fee*; and AB 1239 - *tobacco products manufacturers fee*) is signed into law.

3. **The timing of the proposed water rights fees would have a negative impact on the Board's Revenue Database Consolidation (RDC) project.** The RDC project is integrating all business taxes' programs into one corporate database, which is a complex and challenging effort. Because of the current status of the RDC project, programming for the proposed water rights fee would substantially increase administrative costs due to additional programming, testing, and staff needed to perform these functions. Furthermore, the added strain on staff due to the RDC project would result in most work on the water rights fees programming being completed during overtime (weekends).
4. **The fees would probably be due when the Board is at its peak period for processing returns and payments.** Based on discussion with the SWRCB, the anticipated timing for the initial water rights fees billings would fall in January 2004, and again in April 2004. This time period is a "rush" period for the Property and Special Taxes Department, Sales and Use Tax Department, Administrative Support Division (Mail Services and Reproduction) and Return Process Section.
5. **The bill lacks a direct appropriation to the Board for administrative start-up costs.** Typically, the Board would look at a deficiency process to cover administrative start-up costs. However, the Department of Finance is no longer entertaining deficiencies. While the SWRCB is seeking an interagency contract to reimburse the Board for its administrative start-up costs, this is not a preferred method of reimbursement since the ultimate responsibility and decision of reimbursement would be with the SWRCB.
6. **Finding and billing the correct fee payer is anticipated to be a difficult task.** Staff from the SWRCB stated that they do not maintain adequate ownership data for water rights fees billing purposes. The SWRCB registration database is out-of-date. This could result in billing and ownership issues, including adequately segregating multiple points of incidence of the fee; one body of water can have multiple water rights holders as well as sub-contractors. For example, federal government owns water rights and sub-contracts portions to local governments for their use.

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7. **Is it more appropriate for the SWRCB to bill and collect the fees?** The SWRCB currently has a billing mechanism for the various licensing fees that it administers. This bill would also require it to maintain the database of fee payers, set the fee rates, and handle refund and appeal issues. The Board would only have authority to bill and collect the fees on behalf of the SWRCB. Bifurcation of this fee program would be administratively inefficient, prone to error, likely to cause confusion for the fee payers, and inconsistent with the other 25 plus tax and fee programs administered by the Board.
8. **Related legislation.** Assembly Bill 1764 (Budget Committee) contains provisions almost identical to this bill. That bill was not enrolled.

### **COST ESTIMATE**

Costs would be incurred in programming, notifying fee payers, answering inquiries, developing forms and publications, allocating the fees, processing returns and payments, and performing internal accounting functions. Costs that have been provided to SWRCB were based upon general concepts and assumptions made in June regarding program administration and Board assigned responsibilities which have since been made specific. After Board staff met with SWRCB staff to clarify workload responsibilities, it has been determined that costs associated with implementation and continued operation may exceed the initial estimated costs. Corrected figures are currently being developed.

### **REVENUE ESTIMATE**

This bill is written to set the proposed water rights fee at rates necessary for the SWRCB to recover their program costs. The 2003-04 amounts would be set to recoup approximately \$3.6 million, which represents the SWRCB's half year General Fund funding cut. It is estimated that the following year would require twice that amount of cumulative fee, since it would represent an entire fiscal year. Because the amount of each fee will be set forth in regulations that have not yet been prepared, it is not possible at this time to identify the different fees that would be due from each of the approximately 15,000 water rights holders subject to a fee.

Analysis prepared by:	Kevin Beile	916-323-7169	09/15/03
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Contact:	Margaret S. Shedd	916-322-2376
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